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FEDEX GROUND PACKAGE SYSTEM, INC.

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 STEVEN HERNANDEZ, on behalf of himself
and others similarly situated,

13 Plaintiff,

14 v.

15 FEDEX GROUND PACKAGE SYSTEM,
16 INC., a Delaware corporation; and DOES 1
through 50, inclusive,

17 Defendants.

18 Case No. _____
19

20 **DEFENDANT'S NOTICE OF REMOVAL
OF CIVIL ACTION TO FEDERAL COURT
PURSUANT TO 28 U.S.C. §§ 1332, 1441,
1446, AND 1453**

21 [Filed concurrently with Declarations of Andrea
K. Cox and Alexander Chemers, Certification of
22 Interested Entities or Persons, and Civil Case
Cover Sheet]

23 Complaint Filed: December 16, 2016
24 Trial Date: None
25
26
27
28

Case No. _____

1 **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
2 OF CALIFORNIA, AND TO PLAINTIFF AND HIS COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** defendant FedEx Ground Package System, Inc.
4 (“Defendant”) removes this action from the Superior Court of the State of California for the
5 County of Alameda, to the United States District Court for the Northern District of California
6 pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. As discussed below, this Court has original
7 jurisdiction over this matter pursuant to the Class Action Fairness Act (“CAFA”).

8 **I. THE STATE COURT ACTION**

9 1. On or about December 16, 2016, plaintiff Steven Hernandez (“Plaintiff”) filed a
10 Class Action Complaint (“Complaint”) in the Superior Court of the State of California, County of
11 Alameda, entitled *Steven Hernandez, on behalf of himself and others similarly situated, Plaintiff, v.*
12 *FedEx Ground Package System, Inc., a Delaware corporation; and Does 1 through 50, inclusive,*
13 *Defendants*, which was assigned case number RG16842756 (the “State Court Action”).

14 2. On or about February 21, 2017, Plaintiff filed a First Amended Class Action
15 Complaint (“First Amended Complaint”) in the Superior Court of the State of California, County
16 of Alameda. The First Amended Complaint asserts the following claims for relief against
17 Defendant: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Wages and Overtime in Violation
18 of Labor Code § 510; (3) Meal-Period Liability Under Labor Code § 226.7; (4) Rest-Break
19 Liability under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor
20 Code § 203; (7) Violation of Business & Professions Code § 17200 *et seq.*; and (8) Penalties
21 Pursuant to Labor Code § 2699 *et seq.*

22 3. On February 22, 2017, Defendant received via the undersigned counsel of record a
23 copy of the First Amended Complaint, as well as other documents filed in the State Court Action.
24 A true and correct copy of the First Amended Complaint is attached as **Exhibit A** to this Notice of
25 Removal. Declaration of Alexander Chemers (“Chemers Decl.”), ¶ 2.

26 4. On March 14, 2017, Defendant’s attorneys executed a Notice and Acknowledgment
27 of Receipt, thereby triggering the 30-day period for Defendant to respond to the First Amended
28 Complaint. A true and correct copy of the executed Notice and Acknowledgment of Receipt is

1 attached as **Exhibit B** to this Notice of Removal. Chemers Decl., ¶ 3.

2 5. Plaintiff has not yet identified any of the fictitious “Doe” defendants identified in
 3 the First Amended Complaint and the citizenship of “Doe” defendants is disregarded for the
 4 purposes of removal. 28 U.S.C. § 1441(a); *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339
 5 (9th Cir. 1987).

6 6. This Notice is Timely. This Notice of Removal is timely filed within 30 days of
 7 Defendant’s attorneys executing the Notice and Acknowledgment of Receipt.

8 **II. JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

9 7. This action is one over which this Court has original jurisdiction under CAFA and is
 10 one which may be removed by Defendant pursuant to 28 U.S.C. §§ 1441 and 1453, because the
 11 number of potential class members exceeds 100, the parties are citizens of different states, and the
 12 amount in controversy exceeds the aggregate value of \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(2)
 13 and (d)(6).¹

14 A. **The Size of the Putative Class Exceeds 100**

15 8. In his First Amended Complaint, Plaintiff defines the proposed class as: “[A]ll
 16 individuals employed by Defendants as non-exempt employees within the State of California at
 17 any time within four (4) years of the filing of this lawsuit.” Ex. A, ¶ 14.

18 9. Defendant’s employment records show that there are thousands of current and
 19 former employees who fall within Plaintiff’s proposed class. For example, during the time that
 20 Plaintiff worked for Defendant, he worked as a Package Handler. Even if the proposed class is
 21 limited to only those persons holding the “Full-Time Package Handler” or “Part-Time Package
 22 Handler” positions in California within the four-year period prior to the filing of this lawsuit, there
 23 would be at least 19,044 putative class members. Declaration of Andrea K. Cox (“Cox Decl.”),
 24 ¶ 9.

25
 26
 27 1 Defendant is the only named defendant in this matter and, thus, there are no other defendants to
 28 consent to removal. Furthermore, an action may be removed by a single defendant under CAFA
 without the consent of the other defendants. *See* 28 U.S.C. § 1453(a).

1 **B. The Parties Are Diverse**

2 10. Citizenship of Defendant. Pursuant to 28 United States Code § 1332(c), “a
 3 corporation shall be deemed to be a citizen of any State by which it has been incorporated and of
 4 the State where it has its principal place of business.” The United States Supreme Court
 5 established the proper test for determining a corporation’s principal place of business for purposes
 6 of diversity jurisdiction in *The Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). The Supreme Court
 7 concluded that the “‘principal place of business’ is best read as referring to the place where a
 8 corporation’s officers direct, control, and coordinate the corporation’s activities.” *Id.* at 1184. The
 9 Court further clarified that the principal place of business is the place where the corporation
 10 “maintains its headquarters – provided that the headquarters is the actual center of direction,
 11 control, and coordination.” *Id.*

12 11. At all times on or after the date this action was filed, Defendant has been a citizen of
 13 the states of Pennsylvania and Delaware. Defendant has its principal place of business in Moon
 14 Township, Pennsylvania, as that is the location of its headquarters from which its officers direct,
 15 coordinate, and control its business operations. Cox Decl., ¶¶ 2-7. In addition, Defendant is
 16 incorporated in the State of Delaware. *Id.* Defendant is neither incorporated in California, nor
 17 does it have a principal place of business in California. *Id.* Accordingly, for purposes of
 18 determining diversity, Defendant is regarded as a citizen of Pennsylvania and Delaware, and not a
 19 citizen of California.²

20 12. Citizenship of Plaintiff and putative class members. For diversity purposes, an
 21 individual is a “citizen” of the state in which he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*,
 22 704 F.2d 1088, 1090 (9th Cir. 1983). An individual’s domicile is the place he resides with the
 23 intention to remain or to which he intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
 24 857 (9th Cir. 2001).

25 13. The First Amended Complaint alleges that “Plaintiff is a resident of California and,
 26 during the time period relevant to this Complaint, was employed by Defendants as a non-exempt

28 ² The citizenship of fictitiously named “Doe” defendants is disregarded for purposes of removal.
 28 U.S.C. § 1441(a); *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987).

1 hourly employee within the State of California.” Ex. A, ¶ 2. Likewise, Defendant’s employment
 2 records confirm that throughout his employment with Defendant, Plaintiff lived in the State of
 3 California, including the home address that Plaintiff provided for payroll purposes and the address
 4 shown on Plaintiff’s driver’s license, which was issued by the State of California. Cox Decl., ¶ 8.
 5 Thus, Plaintiff is a citizen of the State of California.

6 14. Members of the proposed class, who by definition are or were employed in
 7 California, are presumed to be primarily citizens of the State of California. *See, e.g., Lew v. Moss,*
 8 797 F.2d 747, 750 (9th Cir. 1986) (“place of employment” an important factor weighing in favor of
 9 citizenship). Thus, even if Plaintiff himself was somehow a citizen of Pennsylvania or Delaware
 10 (and there is no evidence that he is), there is no possible way that the tens of thousands of putative
 11 class members, all of whom worked in California (Ex. A, ¶ 14), were also citizens of Pennsylvania
 12 or Delaware.

13 15. Accordingly, the minimal diversity of citizenship requirements under 28 U.S.C. §
 14 1332(d)(2) are met.

15 **C. The Amount in Controversy Exceeds an Aggregate of \$5,000,000**

16 16. Plaintiff has not alleged a specific amount in controversy in the First Amended
 17 Complaint. In order to remove a class action pursuant to CAFA, the amount in controversy must
 18 exceed \$5,000,000, and it is the removing party’s burden to establish, “by a preponderance of
 19 evidence, that the aggregate amount in controversy exceeds the jurisdictional minimum.”
 20 *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013). To do so, the
 21 removing defendant must “produce underlying facts showing only that it is *more likely than not*
 22 that the amount in controversy exceeds \$5,000,000.00, assuming the truth of the allegations plead
 23 in the Complaint.” *Muniz v. Pilot Travel Ctrs. LLC*, No. CIV. S-07-0325 FCD EFB, 2007 WL
 24 1302504, at *5 (E.D. Cal. May 1, 2007) (emphasis in original).

25 17. In considering the evidence submitted by the removing defendant, the Court must
 26 “look beyond the complaint to determine whether the putative class action meets the [amount in
 27 controversy] requirements” adding “the potential claims of the absent class members” and
 28 attorneys’ fees. *Rodriguez*, 728 F.3d at 981 (citing *Standard Fire Ins. Co. v. Knowles*, 133 S.Ct.

1 1345, 185 L.Ed. 2d 439 (2013)); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 705 (9th Cir.
 2 2007). Furthermore, “[i]n considering whether the amount in controversy is clear from the face of
 3 the complaint, a court must assume that the allegations of the complaint are true and that a jury will
 4 return a verdict for the plaintiff on all claims made in the complaint.” *Altamirano v. Shaw Indus., Inc.*, C-13-0939 EMC, 2013 WL 2950600, at *4 (N.D. Cal. June 14, 2013) (citing *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)); *see also Muniz*, 2007 WL 1302504, at *3.

8 18. While Defendant denies the validity of Plaintiff’s claims and requests for relief, and
 9 does not concede in any way that the allegations in the First Amended Complaint are accurate, that
 10 Plaintiff’s claims are amenable to classwide treatment, or that Plaintiff or the purported class are
 11 entitled to any of the requested relief, the allegations in the First Amended Complaint show it is
 12 more likely than not that the amount in controversy exceeds the jurisdictional minimum. *See*
 13 *Guglielmino*, 506 F.3d at 700.

14 19. As described further below, as well as in the concurrently filed declaration from
 15 Andrea K. Cox,³ the amount in controversy exceeds the jurisdictional minimum of \$5,000,000.

16 **1. Defendant’s Estimate of the Amount in Controversy**

17 20. In determining the amount in controversy to support its Notice of Removal,
 18 Defendant relies here on a conservative estimate of the amount in controversy based only on
 19 damages sought by Plaintiff as a result of the alleged: (1) meal period violations; (2) rest break
 20 violations; (3) failure to provide accurate wage statements; (4) failure to timely pay all wages owed
 21

22 ³ For purposes of effecting removal pursuant to 28 U.S.C. § 1332(d), declarations from defendants
 23 and their counsel constitute sufficient evidence to establish the amount in controversy. *See, e.g., Muniz*, 2007 WL 1302504, at *2, *5 (relying on the evidence submitted by the defendant in the
 24 form of a declaration from its employee relations manager, which “set forth the underlying facts
 25 needed to calculate the amount in controversy,” and a declaration from its counsel, which
 26 calculated the amount in controversy based on the underlying facts and in light of the laws
 27 governing the plaintiff’s claims, and finding that the defendant had shown that “it is more likely
 28 than not that the jurisdictional threshold of \$5,000,000.00 is met”); *Jasso v. Money Mart Express, Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at *4 (N. D. Cal. Mar. 1, 2012) (finding there was
 “adequate foundation” for the declaration submitted by the defendant’s human resources director
 regarding “the numbers of employees, payperiods [sic] and average rates of pay during the
 applicable limitations periods,” which was derived from a compilation of “information that is kept
 in the normal course of business,” and relying on the declaration to find that the defendant had met
 its burden to establish the amount in controversy in excess of CAFA’s jurisdictional threshold).

1 upon termination; and (5) unpaid overtime wages for work performed in excess of 40 hours in one
 2 workweek or in excess of 8 hours in one day (“time-and-a-half overtime wages”). Because the
 3 amounts in controversy for these claims alone satisfy the jurisdictional minimum requirement of \$5
 4 million, Defendant does not include additional analyses for estimates of the amounts placed in
 5 controversy by Plaintiff’s other allegations in the First Amended Complaint, including potential
 6 damages sought for the allegations of: (1) failure to pay minimum wages; (2) unfair, unlawful, and
 7 harmful business practices; and (3) Private Attorneys General Act penalties, as well as attorneys’
 8 fees associated with Plaintiff’s allegations. Defendant has also based its removal calculations on
 9 current and former employees who held the Package Handler position, rather than the broader class
 10 proposed by Plaintiff. If necessary, Defendant could and would supplement this Notice of
 11 Removal to include estimates of the additional amounts in controversy based on the other
 12 allegations contained in the First Amended Complaint.

13 a) **The Amount Placed in Controversy by the Meal Period Claim**
 14 **Exceeds \$5,000,000**

15 21. In his Third Cause of Action, Plaintiff seeks to recover “damages in an amount
 16 equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not
 17 provided or deficiently provided[.]” Ex. A, ¶ 42.

18 22. Based on Defendant’s records, the approximate number of current and former
 19 employees who held the non-exempt positions of Full-Time Package Handler or Part-Time
 20 Package Handler in California from four years prior to the filing of the Complaint to January 13,
 21 2017 is 19,044.⁴ Cox Decl., ¶ 9. The hourly rate of the putative class members was at least \$8.00
 22 per hour.⁵ *Id.*

23
 24 ⁴ Certain Part-Time Package Handlers and Full-Time Package Handlers in California may have
 25 been included in previous class action settlements, including *Aaron Rangel v. FedEx Ground*
Package System, Inc., et al., C.D. Cal. No. 8:13-cv-01718-DOC(JCGx) (settlement entered April
 26 8, 2015). Because these employees may have released claims that are asserted on their behalves in
 27 this litigation, Defendant has excluded from its calculations any periods that were covered by these
 28 previous settlements. Cox Decl., ¶ 10.

29 ⁵ From December 16, 2012 to June 30, 2014, the hourly rate of pay for putative class members was
 30 at least \$8.00 per hour. Cox Decl., ¶ 11. From July 1, 2014 through December 31, 2015, the
 31 hourly rate of pay for putative class members was at least \$9.00 per hour. *Id.* From January 1,
 32 2016 through December 31, 2016, the hourly rate of pay for putative class members was at least

1 23. Defendant's calculation of Plaintiff's claim for meal period violations is **\$6,175,504**
2 (\$8 x 1 x 771,938). The computation of the amount in controversy is based on conservative
3 estimates that the 19,044 non-exempt Full-Time Package Handlers or Part-Time Package Handlers
4 worked 771,938 weeks from December 16, 2012 to January 13, 2017, that each putative class
5 member earned a regular rate of \$8.00 per hour, and that each putative class member incurred one
6 meal period violation for every week of work.⁶ Cox Decl., ¶¶ 9; 11.

7 24. When determining the amount placed in controversy by a plaintiff's allegations
8 regarding a common "practice" of meal period violations like those alleged by Plaintiff in the First
9 Amended Complaint (see, e.g., Ex. A, ¶¶ 8; 40-41), an estimate of one meal period violation for
10 every week of work is both reasonable and conservative. *See Campbell v. Vitran Exp., Inc.*, 471
11 Fed. Appx. 646, 649 (9th Cir. 2012); *Mackall v. Healthsource Glob. Staffing, Inc.*, No. 16-CV-
12 03810-WHO, 2016 WL 4579099, at *5 (N.D. Cal. Sept. 2, 2016) (acknowledging that multiple
13 decisions from the Northern District of California have recognized assumptions of one missed meal
14 period per week as "reasonable in light of policy and practice allegations and allegations that
15 defendants' 'regularly' denied class member breaks."); *Unutoa v. Interstate Hotels & Resorts, Inc.*,
16 No. 2:14-CV-09809-SVW-PJ, 2015 WL 898512, at *3 (C.D. Cal. Mar. 3, 2015) (approving of
17 defendant's assumption that class members missed one required meal period per week).

18 25. Consequently, the amount placed in controversy by the Meal Period Claim alone
19 exceeds \$5,000,000.

b) The Amount Placed in Controversy by the Rest Break Claim Exceeds \$5,000,000

22 26. In his Fourth Cause of Action, Plaintiff avers that he “and other class members are
23 entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of

25 \$10.00 per hour. *Id.* Since January 1, 2017, the hourly rate of pay for putative class members has
26 been at least \$10.50 per hour. *Id.* For purposes of these calculations, Defendant has conservatively
used the lowest hourly rate of \$8.00.

²⁷ ²⁸ ⁶ In light of the First Amended Complaint’s allegation that Defendant’s purported meal period violations were extensive, “it is reasonable to assume a 100% violation rate in calculating the amount in controversy for this cause of action.” *Altamirano v. Shaw Indus., Inc.*, No. C-13-0939 EMC, 2013 WL 2950600, at *11 (N.D. Cal. June 14, 2013).

1 pay for each day worked without the required rest breaks[.]” Ex. A, ¶ 47.

2 27. Defendant’s calculation of Plaintiff’s claim for rest break violations is **\$6,175,504**
 3 (\$8 x 1 x 771,938). The computation of the amount in controversy is based on conservative
 4 estimates that the 19,044 non-exempt Full-Time Package Handlers or Part-Time Package Handlers
 5 worked 771,938 weeks from December 16, 2012 to January 13, 2017, that each putative class
 6 member earned a regular rate of \$8.00 per hour, and that each putative class member incurred one
 7 rest break violation for every week of work.⁷ Cox Decl., ¶¶ 9; 11.

8 28. As with meal period violations, an estimate of one rest break violation per week of
 9 work is both reasonable and conservative where, as here, the plaintiff contends that there was a
 10 common and consistent “practice” of rest break violations. See, e.g., Ex. A, ¶¶ 9; 44; *Campbell*,
 11 471 Fed. Appx. at 649; *Mackall*, 2016 WL 4579099, at *5; *Unutoa*, 2015 WL 898512, at *3.

12 29. Consequently, the amount placed in controversy by the Rest Break Claim alone also
 13 exceeds \$5,000,000.

14 c) **The Amount Placed in Controversy by the Non-Compliant Wage**
 15 **Statements Exceeds \$5,000.000**

16 30. In his Fifth Cause of Action, Plaintiff alleges that:

17 Defendant[] failed to provide Plaintiff and other class members with
 18 accurate itemized wage statements in writing, as required by the
 19 Labor Code. Specifically, the wage statements given to Plaintiff and
 20 other class members by Defendant[] failed to account for unpaid
 21 wages and overtime, and premium pay for deficient meal periods and
 22 rest breaks, discussed above, all of which Defendant[] knew or
 23 reasonably should have known were owed to Plaintiff and other class
 24 members

25 Ex. A, ¶ 50.

26 31. Plaintiff asserts that as a result of Defendant’s alleged consistent failure to provide
 27 wage statements in compliance with California law, he and his putative class members are due “the
 28 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation

27 ⁷ In light of the First Amended Complaint’s allegation that Defendant’s purported rest break
 28 violations were extensive, “it is reasonable to assume a 100% violation rate in calculating the
 amount in controversy for this cause of action.” *Altamirano*, 2013 WL 2950600, at *11.

1 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding
 2 an aggregate penalty of four thousand dollars (\$4,000)." Ex. A, ¶ 53.

3 32. The statute of limitations for a claim for wage statement penalties under Labor Code
 4 Section 226(e) is one year. Cal. Civ. Proc. Code § 340(a).

5 33. Defendant's calculation of Plaintiff's claim for non-compliant wage statements is
 6 **\$27,783,800.** The computation of the amount in controversy is based on conservative estimates
 7 that Defendant issued at least 286,428 wage statements to non-exempt Full-Time Package Handlers
 8 or Part-Time Package Handlers between December 16, 2015 and January 13, 2017,⁸ that there was
 9 one violation for each putative class member per pay period for which the employee was issued a
 10 paycheck during that statute of limitations period,⁹ that the penalty for the first wage statement
 11 violation for each putative class member is \$50, that the penalty for subsequent wage statement
 12 violations for each class member is \$100, and that the aggregate penalty for each putative class
 13 member does not exceed \$4,000. Cox Decl., ¶¶ 12-13.

14 34. An estimate of one wage statement violation for every pay period is reasonable, as
 15 the First Amended Complaint alleges that "[f]rom at least four (4) years prior to the filing of this
 16 lawsuit, and continuing to the present, Defendants have consistently failed to provide Plaintiff and
 17 other class members with timely, accurate, and itemized wage statements[.]" Ex. A, ¶ 10. In
 18 *Altamirano*, the district court held that it was "reasonable to assume that each putative class
 19 member suffered at least one violation during any given pay period, resulting in an inaccurate wage
 20 statement," in light of the plaintiff's allegations "about the pervasiveness of the policies that are the
 21 subject of the first three causes of actions" for failure to pay minimum wages, failure to pay
 22 overtime wages, and failure to provide meal periods. 2013 WL 2950600, at *11.

23 35. Consequently, the amount placed in controversy by the Wage Statement Claim
 24 alone also exceeds \$5,000,000.

25
 26 ⁸ Package Handlers are paid on a weekly basis. Cox Decl. ¶ 12.

27 ⁹ In light of the First Amended Complaint's allegation that Defendant's purported failure to
 28 provide compliant wage statements was extensive, "it is reasonable to assume a 100% violation
 rate in calculating the amount in controversy for this cause of action." *Altamirano*, 2013 WL
 2950600, at *11.

d) The Amount Placed in Controversy by Plaintiff's Claim for Waiting Time Penalties for Failure to Pay All Wages Upon Termination Exceeds \$5,000,000

3 36. In his Sixth Cause of Action, Plaintiff alleges that Defendant “failed to pay
4 [terminated] class members all wages due and certain at the time of termination or within seventy-
5 two (72) hours of resignation.” Ex. A, ¶ 56. In addition, Plaintiff avers that “[t]he wages withheld
6 from these class members by Defendant[] remained due and owing for more than thirty (30) days
7 from the date of separation of employment,” *id.* at ¶ 57, that Defendant’s conduct “was willful,”
8 and that Plaintiff and the putative class members should receive “penalties under Labor Code §
9 203, which provides that an employee’s wages shall continue until paid for up to thirty (30) days
10 from the date they were due.” *Id.* at ¶ 58.

11 37. Section 203 penalties “accrue not only on the days that the employee might have
12 worked, but also on nonworkdays,” for up to 30 days, and the accrual of these penalties “has
13 nothing to do with the number of days an employee works during the month.” *Mamika v. Barca*,
14 68 Cal.App.4th 487, 492-93 (1998). As the “targeted wrong” addressed by Section 203 is “the
15 delay in payment” of wages, that wrong “continues so long as payment is not made”; therefore,
16 “[a] proper reading of section 203 mandates a penalty equivalent to the employee’s daily wages for
17 each day he or she remained unpaid up to a total of 30 days.” *Id.* at 493.

18 38. Here, Plaintiff's Section 203 claim is not premised only on the theory that
19 Defendant failed to timely deliver final paychecks to terminated employees; rather, Plaintiff
20 contends that Defendant owes penalties at least in part as a result of its "consistent policy of failing
21 to pay *all wages* due and owed to Plaintiff and other class members at the time of their termination
22 of within seventy-two (72) hours of their resignation, as required by California wage-and-hour
23 laws." Ex. A, ¶ 11 (emphasis added). In light of the fact that, through his First Amended
24 Complaint, Plaintiff is also seeking to recover alleged unpaid overtime wages and wages allegedly
25 owed in lieu of providing meal and rest breaks, it is clear that Plaintiff's theory is that such alleged
26 unpaid wages still have not been paid to Plaintiff and putative class members. It is therefore
27 reasonable to calculate the amount in controversy for this claim based on a 30-day penalty
28 calculated at each former employee's daily wage rate. *See Quintana v. Claire's Stores, Inc.*, No.

1 13-0368-PSG, 2013 WL 1736671, at *6 (N.D. Cal. Apr. 22, 2013) (finding that the defendants’
2 waiting time penalties calculation was “supported by Plaintiffs’ allegations” and was “a reasonable
3 estimate of the potential value of the claims” where the complaint alleged that the defendants
4 “regularly required” putative class members to work off-the-clock without compensation, and the
5 defendants estimated that each putative class member “potentially suffered at least one violation
6 that continues to be unpaid”); *Stevenson v. Dollar Tree Stores, Inc.*, No. CIV S-11-1433 KJM,
7 2011 WL 4928753, at *4 (E.D. Cal. Oct. 17, 2011) (finding it reasonable for the defendant to
8 assume, in light of the allegations in the complaint that members of the putative class “routinely”
9 missed meal periods, that “all members of the proposed class . . . would have missed a meal period
10 as described in the complaint at least once and were thus entitled to the waiting time penalty”).

11 39. Defendant's calculation of Plaintiff's claim for waiting time penalties for failure to
12 timely pay all wages upon termination is **\$6,228,960** (30 x \$8 x 2 x 12,977). The computation of
13 the amount in controversy is based on conservative estimates that, from December 16, 2013 to
14 January 13, 2017,¹⁰ approximately 12,977 non-exempt Full-Time Package Handlers or Part-Time
15 Package Handlers were separated from employment with Defendant, that each of these 12,977
16 putative class members is qualified to receive waiting time penalties,¹¹ that each putative class
17 member earned a regular rate of \$8.00 per hour, and that a "day" for the purpose of the waiting
18 time penalty constitutes only two work hours. Cox Decl., ¶¶ 11; 14.

19 40. Consequently, the amount placed in controversy by the Waiting Time Penalties
20 Claim alone also exceeds \$5,000,000.

e) **The Amount Placed in Controversy by the Time-and-a-Half Overtime Wages Claim Exceeds \$5,000,000**

23 41. In his Second Cause of Action, Plaintiff alleges that Defendant “fail[ed] to pay
24 Plaintiff and other class members time and one-half their regular rates of pay for hours worked in

²⁶ ¹⁰ The statute of limitations for waiting time penalty claims pursuant to Section 203 is three years. Cal. Code Civ. P. 338(a); *Pinededa v. Bank of Am.*, 50 Cal. 4th 1389 (2010).

²⁷ ¹¹ In light of the First Amended Complaint’s allegation that Defendant’s purported failure to timely pay all wages due upon termination was extensive, “it is reasonable to assume a 100% violation rate in calculating the amount in controversy for this cause of action.” *Altamirano*, 2013 WL 2950600, at *11.

1 excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek.” Ex. A, ¶
 2 34. Plaintiff claims that Defendant failed to pay time-and-a-half overtime wages because it “had a
 3 common policy of failing to pay Plaintiff and other class members for all hours worked, as required
 4 by California wage and hour laws.” *Id.* at ¶ 35.

5 42. Labor Code Section 1194(a) provides:

6 “Notwithstanding any agreement to work for a lesser wage, any
 7 employee receiving less than the legal minimum wage or the legal
 8 overtime compensation applicable to the employee is entitled to
 9 recover in a civil action the unpaid balance of the full amount of this
 10 minimum wage or overtime compensation, including interest
 11 thereon, reasonable attorney’s fees, and costs of suit.”

12 43. Defendant’s calculation of Plaintiff’s claims for unpaid time-and-a-half overtime
 13 wages is \$9,263,256 (\$12 x 1 x 771,938). The computation of the amount in controversy is based
 14 on conservative estimates that the 19,044 non-exempt Full-Time Package Handlers or Part-Time
 15 Package Handlers worked 771,938 weeks from December 16, 2012 to January 13, 2017, that each
 16 putative class member earned a regular rate of \$8.00 per hour, and that each putative class member
 17 incurred one hour of unpaid overtime for every week of work.¹² Cox Decl., ¶¶ 9; 11.

18 44. An estimate of one hour of unpaid overtime for every week of work has been
 19 accepted by the federal courts as a reasonable and conservative figure. *See Jasso v. Money Mart*
Express, Inc., No. 11-CV-5500 YGR, 2012 WL 699465, at *5-6 (N. D. Cal. Mar. 1, 2012) (holding
 20 that calculating at least one violation per week was a “sensible reading of the alleged amount in
 21 controversy”); *Ray v. Wells Fargo Bank, N.A.*, No. CV 11-01477 AHM (JCx), 2011 WL 1790123,
 22 at *6-7 (C.D. Cal. May 9, 2011). This is especially the case where, as here, the plaintiff fails to
 23 provide specific allegations concerning the frequency of which he worked overtime without being
 24 provided the requisite compensation. *See Byrd v. Masonite Corp.*, No. EDCV 16-35 JGB (KKX),
 25 2016 WL 2593912, at *5 (C.D. Cal. May 5, 2016).

26 45. Consequently, the amount placed in controversy by the Overtime claim alone
 27 exceeds \$5,000,000.

28 ¹² In light of the First Amended Complaint’s allegations that Defendant’s purported failure to pay
 29 overtime wages was extensive, “it is reasonable to assume a 100% violation rate in calculating the
 30 amount in controversy for this cause of action.” *Altamirano*, 2013 WL 2950600, at *11.

f) Summary of Defendant's Calculations

46. As described above, a reasonable and conservative estimate of the amount in controversy presented by *each* of Plaintiff's meal period, rest break, wage statement, waiting time penalty, and overtime claims exceeds the \$5,000,000 jurisdictional threshold of 28 U.S.C. § 1332(d).

III. DEFENDANT HAS SATISFIED THE REMAINING REMOVAL REQUIREMENTS

47. Venue is Proper. The Superior Court of California, County of Alameda, is located within the Northern District of California. Therefore, venue for the purposes of removal is proper pursuant to 28 U.S.C. § 84(a) because the Northern District of California is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

48. On April 12, 2017, Defendant filed an Answer to Plaintiff's First Amended Complaint in the Superior Court of California, County of Alameda. A true and correct copy of the Answer is attached as **Exhibit C** to this Notice of Removal. Chemers Decl., ¶ 4.

49. As further required by 28 U.S.C. § 1446(a), Defendant hereby provides this Court with copies of all process, pleadings, and orders served on Defendant in this action. True and correct copies of these documents are attached as **Exhibit D** to this Notice of Removal. Defendant has not been served with any pleadings, process, or orders besides those attached. Chemers Decl., ¶ 5.

50. In accordance with 28 U.S.C. § 1446(d), Defendant will promptly give written notice to Plaintiff of the filing of this Notice of Removal, and will file a copy of the Notice with the clerk of the Superior Court of the State of California, County of Alameda. Further, in accordance with Federal Rule of Civil Procedure 7.1 and Northern District of California Local Rule 3-15, Defendant concurrently files its Certification of Interested Entities or Persons and Disclosure Statement.

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1 51. Finally, in the event this Court has any question regarding the propriety of this
2 Notice of Removal, Defendant requests that the Court issue an Order to Show Cause so that
3 Defendant may have an opportunity to more fully brief the basis for this removal.
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5 DATED: April 13, 2017

OGLETREE, DEAKINS, NASH, SMOAK &
6 STEWART, P.C.

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By: /s/ Alexander M. Chemers
9 Betsy Johnson
Evan R. Moses
Alexander M. Chemers
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Attorneys for Defendant
12 FEDEX GROUND PACKAGE SYSTEM, INC.

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